

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of	)	
Paxson Spokane License, Inc.	)	MM Docket No. 03-15
KGPX(TV), Spokane, WA	)	
	)	File No. BFRECT-20050210AWF
Negotiated Channel Arrangement for	)	
First Round Digital Channel Election	)	
	)	
To: The Secretary		
Attn: Chief, Media Bureau		

**REPLY COMMENTS**

Paxson Spokane License, Inc. ("Paxson"), licensee of television station KGPX(TV), Spokane, Washington (the "Station"), hereby responds to the comments and objection of Spokane Television, Inc. ("Spokane Television") and Apple Valley Broadcasting, Inc. ("Apple Valley"), the objections of Pullman Broadcasting, Inc. ("Pullman"), and North Pacific International Television, Inc. ("NPIT"), the comments of Spokane School District #81 ("School District #81"), Mountain Licenses, L.P. ("Mountain"), KCTS Television ("KCTS"), Washington State University ("WSU"), and National Minority TV, Inc. ("NMTV"), and the late-filed objection of Puget Sound Educational TV, Inc. ("Puget Sound") (and collectively, the "Commenters") regarding the above-referenced channel election application. The Station was allotted Channel 34 but is considered a "singleton" as it holds no paired allotment. The Station thus is at a comparative disadvantage to many other broadcast television stations who, as a part of the

Commission's channel election process, could choose between one of two assigned allotments for post-transition operation.

Paxson is concerned about the Station's ability post-transition to replicate digital service on its allotted channel and accordingly examined whether an alternative channel might provide improved digital coverage. Paxson concluded that Channel 43 not only would preserve existing service, but the channel offered the potential in the future for expanded service to those who do not currently receive it.

The Commission's channel election process permitted stations to elect a channel unassigned to them by entering into a negotiated channel arrangement (NCA). Channel 43, however, was not assigned to any station in the market -- not that stations were restricted under NCAs from electing such channels -- so there was no explicit party with whom to negotiate. Paxson accordingly contacted a number of other stations in the market (prior to the Commission's creation of a formalized objection period)<sup>1</sup> to see if they objected to the Station's election of Channel 43. Five parties returned signed acknowledgements to Paxson indicating that they had no objections to the Station's proposed election.<sup>2</sup>

---

<sup>1</sup> The Commission did not establish a formalized objection period until a few days before elections were due. *Public Notice*, "DTV Channel Election Issues -- Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC form 381 Certifications, and Notification to FCC of Flash Cut Decisions, DA 05-273 (Feb. 1, 2005).

<sup>2</sup> Paxson received signed acknowledgments from KHQ, Incorporated, licensee of KHQ-TV, Spokane, WA; KSKN Television, Inc., licensee of KSKN(TV), Spokane, WA; King Broadcasting Corp., licensee of KREM-TV, Spokane, WA; NMTV, licensee of KNMT(TV), Portland, OR; School District #81, licensee of KSPS-TV, Spokane, WA; and WSU, licensee of KWSU-TV, Pullman,

Paxson also received a response from Apple Valley that is discussed in more detail below. Paxson identified the stations it contacted on Schedule A of the Form 382.

Commenters are licensees of stations that were listed by Paxson on Schedule A. Commenters all have denied having entering into an NCA with Paxson. Paxson apologizes for obviously compelling Commenters to file such comments. Paxson should have been more clear, as some other stations were in preparing their election forms, that the identified parties on Schedule A were listed because they had not raised any reasonable objection to the Station's election of Channel 43.

Paxson hopes and certainly believes that Commenters have not been prejudiced in any way by listing their licensed stations on Schedule A. Paxson notes that the comments of WSU, School District #81, and NMTV, as well as the acknowledgements returned to Paxson by these parties, verify that these parties do not object to the Station's election of Channel 43, as their inclusion on Schedule A was meant to convey. Similarly, KCTS, Mountain and Puget Sound, although asserting that they are not parties to an NCA, do not raise any objection to the Station's election of Channel 43 itself.

Several commenters raise additional points. Although School District #81, licensee of television station KSPS-TV, Spokane, Washington states that it does not object to the Station's specification of Channel 43 for digital operation, it

---

WA, indicating that these parties had no objection to the Station's election of Channel 43.

alleges that the Station prematurely elected Channel 43 and instead should have waited until the second round. Paxson disagrees. The Commission allowed in-core “singleton” stations such as KGPX to elect an unassigned channel in the first round so long as done by an NCA. Five parties signed documents indicating they did not object to the Station’s election. On March 15<sup>th</sup>, other parties indicated their lack of objection as well. School District #81 never claims it is adversely impacted by the Station’s election, and it is difficult to imagine how it could be.

Pullman, licensee of television station KQUP, Pullman, Washington, notes in its comments that it is unable to consent or agree to any negotiated arrangement affecting KQUP, as that station currently has pending an application for “flash cut” conversion that is awaiting Canadian coordination. As Pullman confirms, however, the Station’s election of Channel 43 does not in fact affect KQUP, and Pullman therefore concludes in its comments that it does not wish to be involved.

NPIT, licensee of television station KHCV(TV), Seattle, Washington also questions its need to be involved in the Station’s election of Channel 43. Although KHCV-DT has elected to operate on Channel 44, first-adjacent to the Station’s elected Channel 43, NPIT’s comments confirm that it believes that the two stations have sufficient geographic separation to avoid any interference. Accordingly, NPIT asserts that it need not be involved in the Station’s election. Paxson agrees that NPIT need not be involved in the Station’s election, but had notified NPIT of the Station’s election, and had included KHCV on its list of

contacted stations as a courtesy to ensure that NPIT was aware of the possible adjacent channel issue.

Spokane Television, licensee of television station KXLY-TV, Spokane, Washington and Apple Valley, licensee of television stations KAPP-TV, Yakima, Washington and KVEW-TV, Kennewick, Washington jointly assert that they at no time entered into an NCA with Paxson. Spokane Television and Apple Valley go as far as to accuse Paxson of “bad faith strategic behavior” and “material misrepresentation” for indicating on the Station’s Form 382 that Apple Valley had not objected to the Station’s election, when it alleges that it had indicated to Paxson that it did have an objection to the Station’s election. Paxson denies these serious accusations.

Paxson did receive a letter from the Vice President and General Manager of KAPP-TV, dated January 18, 2005, explaining that KAPP-TV’s engineers were “still evaluation [sic] the possible interference situation” related to the Station’s proposed election. Paxson had undertaken interference analysis of its election proposal and had taken care to ensure that impermissible interference was not created. As such, Paxson understood this letter to indicate that Apple Valley was evaluating whether potential interference to KAPP-TV could serve as grounds for an objection to the Station’s election, and that Apple Valley would object if such interference was found.<sup>3</sup> Paxson is confident that Apple Valley did not find any impermissible interference and unsurprisingly did not receive any further contact

---

<sup>3</sup> Paxson notes that its own analysis shows that the Station’s election of Channel 43 would not in fact cause any interference to KAPP-TV, or to any other station.

from Apple Valley before the filing of their comments and objection in this proceeding. Accordingly, Paxson listed Apple Valley on the Station's Schedule A as not having raised a reasonable objection to the election (the Commission informally had indicated that it would disregard unreasonable objections).

Paxson again apologizes for not being more clear, as some other stations were, about the identified parties on Schedule A. Spokane Television and Apple Valley obviously are concerned about their inclusion on the list. Paxson does not believe, however, that either has been prejudiced in any way. Indeed, Spokane Television and Apple Valley manifestly have had an opportunity to timely comment on the Station's election. Paxson's actions here rise nowhere near the alleged level of "material misrepresentation" or "bad faith strategic behavior."

Paxson contacted Spokane Television and Apple Valley in the very beginning pursuant to a courteous and good faith effort to ensure that all parties potentially affected by the Station's election both had notice and had an opportunity to express a reasonable objection. Paxson contacted the parties well before the Commission ever established a formal objection period. Spokane Television and Apple Valley now essentially seek to punish Paxson for an inability to foresee that the Commission would solicit objections. Ultimately, of course, Spokane Television and Apple Valley do not explain how they are adversely affected by the Station's election, nor can they.

Other than as described above, Paxson received no objections to the Station's election of Channel 43. As Paxson has shown, none of the objections raised in this proceeding present issues that should prevent the assignment of Channel 43 to the Station for post-transition operation. Paxson does not believe that the election has any anti-competitive effects or that it has any adverse impact on any other station. Therefore, Paxson respectfully requests that the Commission assign Channel 43 to the Station for post-transition operation.

Respectfully Submitted,

PAXSON SPOKANE LICENSE, INC.

By: 

William L. Watson  
Secretary

Paxson Communications Corporation  
601 Clearwater Park Road  
West Palm Beach, FL 33401

Dated: March 22, 2005

Certificate of Service

I, ~~CYNTHIA OLIVER~~, certify that on this 22nd day of March, 2005 I caused the foregoing Reply Comments to be served by overnight courier on the following:

Nazifa Sawez  
Media Bureau  
Federal Communications Commission  
Room 2-A726  
445 Twelfth Street, SW  
Washington, DC 20554

Peter Tannenwald  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., NW  
Suite 200  
Washington, DC 20036-3120

(Counsel to Pullman and NPIT)

Melodie A. Virtue  
Garvey Schubert Barer  
1000 Potomac Street, NW  
Fifth Floor, The Flour Mill Building  
Washington, DC 20007

Robert J. Rini  
Rini Coran, PC  
1501 M Street NW, Suite 1150  
Washington, DC 20005

(Counsel to Spokane Television and  
Apple Valley)

(Counsel to School District #81)

William P. Mohler  
President & CEO  
KCTS Television  
401 Mercer Street  
Seattle, WA 98109

Dennis P. Corbett  
Leventhal Senter & Lerman PLLC  
2000 K Street, NW, Suite 600  
Washington, DC 20006

(Counsel to Mountain)

Mary Doyle  
Vice President, Information Systems  
Washington State University  
P.O. Box 642530  
Pullman, WA 99164-2530

Mr. Albert B. Brown  
President, Sr. VP & General Manager,  
KSKN(TV) & KREM-TV  
4103 S. Regal  
Spokane, WA 99223-7377

Mr. Peter Morrill  
General Manager, KUID-TV  
1455 N. Orchard Street  
Boise, ID 83706

Mr. Fred Fickenwirth  
General Manager, KLEW-TV  
PO Box 615  
Lewiston, ID 83501

Robert L. Olender, Esq.  
Koerner & Olender, P.C.  
5809 Nicholson Lane, Suite 124  
North Bethesda, MD 20852

Mr. Dave Olmsted  
General Manager, KATU(TV)  
2153 N.E. Sandy Boulevard  
Portland, OR 97232

(Counsel to Puget Sound  
Educational TV, Inc. )

Colby M. May  
Colby M. May, Esq. P.C.  
205 3rd Street, SE  
Washington, DC 20003

(Counsel to NMTV)

Mr. David B. Lippoff  
General Manager, KOIN(TV)  
222 S.W. Columbia Street  
Portland, OR 97201

Mr. Lon C. Lee  
President  
KHQ-TV  
PO Box 600  
Spokane, WA 99210-0600

Mr. Paul Fry  
President & General Manager  
KGW(TV)  
1501 S.W. Jefferson Street  
Portland, OR 97201

Anne Goodwin Crump  
Idaho Public Television  
1455 N. Orchard Street  
Boise, ID 83706

(Counsel for State Board of Education,  
State of Idaho)



---